BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.07.2022

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.(MD)No.2320 of 2012
and
M.P.No.1 of 2012
and
W.M.P.(MD)No.10063 of 2021

The Regional Provident Fund Commissioner,
Officer of the Employees Provident Fund Organization,
Regional Office,
Lady Doak College Road,
Chokkikulam,
Madurai - 625 002. ... Petitioner

Vs.

1. The Presiding Officer,
   Employees Provident Fund Appellate Tribunal,
   Scope Minar, Core II 4th Floor,
   District Centre, Laxmi Nagar,
   New Delhi - 110 092.

2. M/s.Siva Cotton Mills (India) Private Limited,
   T.Kunnathur, Periyar Taluk,
   Madurai District,
   Tamil Nadu - 626 708. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records relating to the impugned order in ATA.No.305 (13) 2010 dated 23.08.2011 issued by the first respondent and quash the same.

For Petitioner	:	Mr.A.John Xavier
For Respondents	:	No appearance

O R D E R

The impugned order passed by the first respondent in ATA.No.305 (13) 2010 dated 23.08.2011, is under challenge in the present Writ Petition.

2. The learned counsel for the petitioner submitted that the second respondent-Establishment is covered under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. The second respondent-Establishment had belatedly remitted the Provident Fund Contributions including the employees' share of Provident Fund Contribution deducted by the employer for the period from 03.02.2007 to 02.03.2008. Therefore, the

Authority under Section 14B of the Act levied the penal damages to the tune of Rs.1,19,750/- (Rupees One Lakh Nineteen Thousand Seven Hundred and Fifty only) and the order was passed on 22.03.2010. This order was passed after affording opportunity of hearing to the second respondent by sending notice for the personal hearing scheduled on 02.02.2010 and on 18.03.2010. Though both notices were received by the second respondent, none appeared on behalf of the second respondent. Therefore, the aforesaid order was passed. Aggrieved by the levy of damages, the second respondent-Establishment filed ATA.No.305 (13) 2010 before the first respondent / Tribunal. The first respondent / Tribunal passed the impugned order on 23.08.2011 remanding the matter to the EPFO authorities with the direction to assess the liability of 22%. This direction to access the liability of 22% is not supported by any reason and is an arbitrary exercise of power. Therefore, this petition.

3. Though notices were served to the respondents and their names are printed in the cause list, there is no representation for the respondents.

Considering the limited scope of the prayer in this Writ Petition, this Court proceeded to dispose of the Writ Petition.

4. A perusal of the records shows that as per the proceedings of Assistant Provident Fund Commissioner in Reference No.TN/RO/MDU/57735/RO/Circle2/PDC/LD/2010 dated 22.03.2010 under Section 14B of the Act, the second respondent was directed to pay a sum of Rs.1,19,750/- (Rupees One Lakh Nineteen Thousand Seven Hundred and Fifty only) as damages for the belated payment of EPF contribution. Against this order, the second respondent preferred an appeal in ATA.No.305 (13) 2010 dated 23.08.2011, before the first respondent.

5. A reading of the order of the first respondent shows that the second respondent who is an appellant before the first respondent took a plea that due to labour problem, the Establishment sustained loss and was declared as sick unit. Without considering this plea, the order was passed by the Authority and therefore, the second respondent prayed for setting aside

the order. The first respondent referring to various judgments observed that "the financial crunch will not be sufficient for waiving the penal damages for default in deposit of EPF contribution" and noted that the second respondent-Establishment deposited the amount under 7-A proceedings voluntarily and it shows that the second respondent-Establishment had no intention to commit the fault and remanded the matter to the Authorities to assess the rate at 22% per annum inclusive all interest. This part of the order is now under challenge. No reason has been given why the assessment is to be done at 22%. When an authority is empowered to calculate the damages at 37% for a default beyond six months and above, there is no reason given in the order of the first respondent as to why the rate of calculation is reduced from 37% to 22%. When it is found that financial crunch is not reason for waiving penal damages for default of deposit of EPF contribution, the reduction of rate of calculation from 37%, prevailing then to 22% is without reason and it is liable to be set aside and accordingly, set aside.

6. The impugned order passed by the first respondent in ATA.No. 305 (13) 2010 dated 23.08.2011, is set aside and the matter is remanded back to the first respondent for fresh disposal. The first respondent is directed to send notice to the parties, hear them and pass appropriate orders on merits and in the manner known to law.

7. Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

21.07.2022

Index : Yes / No

Speaking Order : Yes / No

vji

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G.CHANDRASEKHARAN, J.

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